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EXAMINER

NGUYEN, DAVE TRONG

ART UNIT	PAPER NUMBER
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1632

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DATE MAILED: 08/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Claims 2, 5-8, 20, 25-29, 32, 35, 47-50, 71-74, 76-79, 81-84, 105-111, 118-120, 124-127, 132-134, 140-142, 148-150, 177-181 have been amended, claims 187-208 have been added, claims 9-19, 38-46, 59-69, 80, 85-104, 112, 128, 136, 144, 155-164, 182-186 have been canceled by the amendment dated April 28, 2003. The examiner notes that the previous office action examines the species of chloride as counter ion, and that given such a large number of pending and examined claims, a typographical mistake was made by not including claims 48, 50, 53, 54, 57, and 58 in the prior art rejection. However, the issue is moot in view of the claim amendment, which obviates the prior art rejection of record.

Newly submitted and amended claims 2-8, 20-37, 47-58, 70-74, 76-79, 81-84, 105-111, 113-127, 129-135, 137-143, 145-154, 177-181, 187-208 are now directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Originally filed claims, as now being amended to a distinct invention, are drawn to:

1/ A composition comprising a compacted, condensed spherical complex, which complex consisting essentially of a single nucleic acid molecule and one or more polycationic molecules, said polycationic molecules having a counter ion selected from the group consisting of acetate, bicarbonate, and chloride, or alternatively

2/ A composition comprising condensed complex which has been compacted to a diameter which is less than 30 nm, which compacted and condensed complex consists essentially of a single nucleic acid molecule and one or more polycationic molecules, said polycationic molecules having a counter ion selected from the group consisting of acetate, bicarbonate, and chloride.

However, all pending and examined claims are now directed to an invention of rod-shaped complexes comprising nucleic acid molecules and polycationic molecules, wherein the polycationic molecules do not necessarily comprises a counter ion selected from the group consisting of acetate, bicarbonate, and chloride, and wherein the complexes are not limited in any way to compacted complexes wherein each of which has a diameter of less than 30 nm.

As such, it is apparent that the thrust of the originally filed invention is drawn to a condensed **spherical or a less than 30 nm diameter-complex**, wherein either of the complexes are compacted and consist essentially of a nucleic acid molecule and a **counter ion containing polycationic molecules**. However, the main thrust of

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the invention as now being claimed is directed to a product-by-process, wherein the product is not spherical but rather a **rod shaped complex** consisting essentially of a **nucleic acid molecule and polycationic molecules**, wherein the **polycationic molecules are not limited in any way to a counter ion containing polycationic molecules, nor are the polycationic molecules limited in any way to a diameter of less than 30 nm.**

Note also that this claim amendment does not appear to have written support to support the invention as now being presented generically. While Figure 17 and/or working examples show a condensed complex composed mainly of PEG linked to a cystein bound polylysine peptides (15, 30, 45 residues) complexed with a nucleic acid molecule, wherein the condensed complexes were produced by condensing the nucleic acid molecule with acetate, bicarbonate or chloride salts of PEG/CK15, PEG/CK30 or PEG/CK45 polylysine, such complexes are not indicative of the claimed invention as now being presented, which is clearly drawn to any complex having a rod shape and produced by a process of using a counterion, polycationic molecules and nucleic acid molecules. Therefore, neither the as-filed specification nor the originally filed claims have written support for the claimed invention as now being presented.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, all pending claims are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Therefore, the amendment filed on April 28, 2003, amending all claims drawn to the elected invention so as to become a non-elected invention is non-responsive (MPEP § 821.03). The pending claims are not the same patentable invention as originally presented because of the reasons set forth in the preceding paragraphs.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Dave Nguyen* whose telephone number is **(703) 305-2024**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Deborah Clark*, may be reached at **(703) 305-4051**.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center number is **(703) 305-7401**.

Any inquiry of a general nature or relating to the status of this application should be directed to the *Group receptionist* whose telephone number is **(703) 308-0196**.

Dave Nguyen
Primary Examiner
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**DAVE T. NGUYEN
PRIMARY EXAMINER**